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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 THE CITY AND COUNTY OF SAN
FRANCISCO, CALIFORNIA and THE
16 PEOPLE OF THE STATE OF
CALIFORNIA, Acting by and through San
17 Francisco City Attorney DAVID CHIU,

18 Plaintiffs,

19 v.

20 PURDUE PHARMA L.P., et al.

21 Defendants.
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Case No. 3:18-cv-07591-CRB-JSC

JOINT STATUS UPDATE

Judges: Hon. Charles R. Breyer and Jacqueline
Scott Corley

Courtroom: Via Videoconference

Hearing Date: February 2, 2022

Hearing Time: 9:00 a.m.

The parties respectfully submit this Joint Status Update in advance of the Court's discovery conference scheduled for February 2, 2022, at 9:00 a.m.

JOINT STATEMENT REGARDING SCHEDULE AND DISPUTE RESOLUTION

The parties jointly report on a number of case developments that have taken place since the last conference with the Court.

I. Case Schedule

On June 15, 2021, the Court entered the parties' Joint Stipulation and Amended Order to Modify Case Schedule. Doc. 572. On January 21, 2022, the Court entered another Joint Stipulation and Order to Modify Case Schedule. Doc. 955. The specific dates are reflected in the chart below:

Event	Current Schedule
Custodial Productions Substantial Completion Deadline	June 4, 2021
Document Production Substantial Completion Deadline	June 21, 2021
Plaintiff's Expert Reports	October 5, 2021
Plaintiff's Endo- and Walgreens-Related Expert Reports	October 19, 2021
Close of Fact Discovery	November 12, 2021
Defendants' Expert Reports	December 2, 2021
Walgreens' two responsive reports for Drs. Park and McCann	December 9, 2021
Plaintiff's Expert Rebuttal Reports	December 23, 2021
Close of Expert Discovery	January 14, 2022
Rebuttal Reports for Experts Park and Catizone	January 21, 2022
Motions for Summary Judgment and <i>Daubert</i> Motions	January 24, 2022
<i>Daubert</i> Motions related to Park, Catizone, Padula, Ciccarone, Alexander, and Cutler	February 7, 2022
Oppositions to Motions for Summary Judgment and <i>Daubert</i> Motions	February 25, 2022
Oppositions to <i>Daubert</i> Motions for Park, Catizone, Padula, Ciccarone, Alexander, and Cutler	March 9, 2022
Replies in Support of Motions for Summary Judgment and <i>Daubert</i> Motions	March 11, 2022
Replies in support of <i>Daubert</i> Motions for Park, Catizone, Padula, Ciccarone, Alexander, and Cutler	March 21, 2022
All Trial Materials Due	March 24, 2022
Final Pretrial Conference	April 4, 2022
Trial	April 25, 2022

1 **II. Update on Status of Settlement Among Stipulating Parties**

2 On January 26, 2021, the Court stayed the proceedings as to the Stipulating Defendants.¹
 3 The Stipulating Parties submitted a sixth update to the Court on January 7, 2022, and will submit
 4 a further update on March 10, 2022. Doc. 921.

5 **III. Discovery Orders Issued Since Prior Conference**

6 The Court issued two orders since the last hearing. First, the Court addressed a number of
 7 issues raised in the preceding joint status report. Doc. 943. Then, on January 27, the Court denied
 8 certain Defendants' motion to quash Plaintiff's subpoena seeking CURES data related to two
 9 experts. Doc. 995.

10 **IV. Other Pending Motions**

11 On December 22, 2021, the non-stayed manufacturer Defendants filed a motion to stay the
 12 case against them. Doc. 868. On January 10, Defendants Walgreens and Anda also filed a motion
 13 to stay the case. Doc. 926. Pursuant to the parties' stipulated schedule, the two rounds of briefing
 14 will conclude on February 7 and 10, respectively, and both matters are set for a hearing before
 15 Judge Breyer on February 24, 2022. Docs. 886, 941.

16 The Parties also filed a number of *Daubert* and summary judgment motions on the
 17 January 24 deadline. A further round of *Daubert* briefs is due February 7.

18 Finally, on January 28, the Parties submitted proposals regarding various pre-trial
 19 deadlines and procedures, which the Court addressed in an order issued February 1. Doc. 1004.

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 27 ¹ The Stipulating Defendants are distributors McKesson Corporation, AmerisourceBergen Drug
 28 Corporation, and Cardinal Health, Inc.; and manufacturer Johnson & Johnson, its subsidiary
 Janssen Pharmaceuticals Inc. f/k/a Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen
 Pharmaceutica, Inc. and its former affiliate Noramco, Inc. (with Plaintiff, the "Stipulating
 Parties").

PLAINTIFF'S STATEMENT

I. Defendant Discovery

A. Walgreens

1. Non-Party Trial Preservation Deposition

On January 18, the Court ordered Plaintiff to submit an offer of proof regarding the trial preservation testimony of former Walgreens pharmacist J.S. Doc. 943. Unfortunately, J.S. suffered a tragic, unexpected loss in his immediate family, and Plaintiff is not in a position to make a submission at this time. Plaintiff will report if the status changes.

2. Walgreens' belated production

On January 27, months after the close of fact discovery, Walgreens made a belated production that included "Walgreens' Pharmaceutical Manufacturer Representative Access Policies, Walgreens' quarterly newsletters, and a Walgreens' agreement with Purdue Pharma, L.P." To be clear, these are undoubtedly responsive documents that Walgreens should have produced months if not years ago, and certainly before the depositions on these very topics. *See, e.g.,* RFP No. 3 (seeking "[a]ll documents relating to . . . training materials, or instructions regarding the proper dispensing . . . of controlled substances"); No. 5 (seeking "[a]ll documents and communications or agreements with opioids manufacturers and distributors related to the marketing, sale, promotion, adherent programs, training, or supply of Opioids"); No. 20 (seeking "[a]ll documents constituting educational materials made available . . . for distribution in any medium . . . to Your pharmacists . . . regarding . . . Opioids"). Walgreens' response below that it "did not agree to produce documents in response to RFP No. 5" is misleading. In fact, Walgreens objected based on its assertion that the request was duplicative of requests served in the MDL to which it had already responded. In other words, Walgreens said additional discovery was not necessary here because it was already producing responsive documents to all MDL plaintiffs. As Plaintiff has now learned, that production was incomplete.

Plaintiff has significant questions and concerns about both the timing of the production and the way in which these particular documents (and not others) were identified for production—for example, Walgreens produced a single contract, under which Purdue Pharma

1 paid Walgreens to distribute promotional materials about an opioid product to all of its
2 pharmacists, but has not verified that it has conducted a diligent search for any other similar
3 agreements. Nor has Walgreens produced the actual materials shared with its pharmacists that are
4 described in the Purdue contract.

5 Last week Plaintiff asked Walgreens to explain how it located the late-produced materials.
6 As of the time of writing, Walgreens had not responded, except to suggest at the parties' meet and
7 confer about this status report that it did not conduct a search for what it classifies as "clinical"
8 materials manufacturers paid Walgreens to disseminate. Whether classified as clinical,
9 promotional, marketing, educational, or otherwise, these materials are all responsive to Plaintiff's
10 May 2020 discovery request. Walgreens also stated in the brief status report meet and confer that
11 it was looking for additional similar materials (an implicit acknowledgment that they are relevant
12 and responsive), but has yet to explain where they are searching, how they are searching, or why
13 the searches had not already been conducted. Plaintiff respectfully requests that Walgreens
14 provide that information and produce all responsive documents as soon as possible.

15 3. Unprepared Rule 30(b)(6) witness

16 On Friday, January 28, Walgreens presented a witness to cover the topics remaining from
17 Plaintiff's 30(b)(6) deposition. Unfortunately, the witness was under- or unprepared to offer
18 testimony on a whole host of issues covered by the noticed (and heavily negotiated) topics, and
19 testified that he did not know the answers to a number of questions within the scope of the
20 deposition. As but one example, the witness could not identify with any certainty how Walgreens'
21 pharmacist bonuses were calculated over the years 2006-2013, and he was not sure who at
22 Walgreens would know what metrics were used at any particular time to calculate pharmacists'
23 bonuses in San Francisco. Nor could the witness confirm whether a patient whose opioid
24 prescription was refused could file a complaint affecting the store's customer feedback score.
25 Plaintiff will review the transcript carefully upon receipt and will meet and confer with
26 Walgreens to discuss appropriate next steps.

1 **B. Endo/Par**

2 **1. Endo's Document Productions and Repository**

3 After insisting for months that 2007 call data could not be found and must not exist, Endo
4 has since advised that it has located the data, which it produced on January 28, 2022. It is unclear
5 why Endo's earlier search efforts did not uncover these call data files, especially since the 2007
6 data gap was specifically identified by Plaintiff.

7 Endo also told Plaintiff that "approximately 30 documents" were "inadvertently omitted"
8 from Endo's prior MDL productions and will be produced by January 31. Endo says that these
9 documents were identified during a pre-MDL civil investigation.

10 With respect to the Ankura repository, Endo recently informed Plaintiff that it intends to
11 produce approximately **265,000** repository documents into the MDL. Endo previously took the
12 position that documents in the Ankura repository will not be considered "produced" until
13 particular documents are identified by plaintiffs for production. Now, as part of the special master
14 proceedings in the City of Chicago case, Endo has agreed to produce documents with a TAR
15 responsiveness score of 65-100, plus any family members (including those that receive lower
16 scores) into the MDL in two installments "in or about mid-February." As stated in the parties'
17 prior Joint Status Updates, Plaintiff believes that, if relevant and responsive information is
18 produced, Plaintiff should be permitted to use it as evidence at trial while Defendants should be
19 prohibited from doing so. Plaintiff will keep the Court apprised of any developments. Plaintiff
20 also continues to reserve the right to seek evidentiary sanctions as may be necessary and
21 appropriate.

22 **2. Evidentiary Stipulation and Rule 30(b)(6) Testimony**

23 The parties have agreed in principle on an evidentiary stipulation relating to the
24 distribution of opioid-related marketing materials, and have been working together for weeks to
25 confirm the specific information therein. On January 18, this Court ordered the parties to file the
26 stipulation by January 28, 2022. However, on January 28, the Court granted the parties' request to
27 extend this deadline to February 4, to allow the parties an opportunity to (a) complete final edits
28 and meet and confer efforts, and (b) in light of the recent production of additional call data.

At Plaintiff's request and pursuant to MDL Case Management Order No. 3: Document and Electronically Stored Information Production Protocol (MDL Doc. 443) (adopted by this Court on September 10, 2020) (Doc. 279)), Endo also agreed to try to locate color copies of brochures and books identified in the Materials Dropped Files, better copies of "Premium Materials" used by sales representatives (*e.g.*, pens, clocks, Post-it pads) and/or exemplars of "Premium Materials" that Plaintiff can inspect, and a copy of or more information about Endo's "VAS Pain Assessment Tool CD-ROM."

The parties have agreed upon February 9, for an Endo Rule 30(b)(6) deposition relating to agreed-upon marketing topics.

3. Endo's Efforts to Reopen the Deposition of Linda Kitlinski

On October 5, 2021, Endo served a Cross-Notice of Deposition of Linda Kitlinski in this matter pursuant to Federal Rules of Civil Procedure 30. The deposition being "cross-noticed" was that noticed by the Florida Attorney General in its state court case against Endo and other opioid manufacturers. It is Plaintiff's understanding that Endo cross-noticed Ms. Kitlinski's deposition in *every jurisdiction* where similar litigation was pending. Plaintiff objected to the cross-notice on multiple grounds, but ultimately agreed not to move to quash.

A two-day deposition commenced on November 22-23, 2021, but several parties, including Plaintiff, did not have an opportunity to examine the witness directly pursuant to the notice Endo had served in their cases. Ms. Kitlinski's attorney agreed to identify additional dates in December 2021 or January 2022 should parties choose to continue the deposition.

On January 15, Plaintiff learned that the State of Florida settled its case with Endo and had withdrawn its deposition notice. On January 19, 2022, Endo served a Notice of Cancellation of Cross-Notice of Deposition of Linda Kitlinski in this case. Plaintiff declined to serve (by leave of court or stipulation of the parties as required under Rule 30) another notice of deposition of Ms. Kitlinski in this matter, particularly since any deposition would not be until February 2022.

In response, Endo now argues that testimony from the two-day deposition of Ms. Kitlinski, which it noticed and subsequently canceled the continuation of, should be deemed inadmissible here and in any other pending litigation unless it is permitted to notice yet another

1 deposition of Ms. Kitlinski—*a third deposition of this witness, three months after the close of*
 2 *discovery*—so it can conduct a cross examination. Endo contends it should be permitted to do so
 3 because its earlier notice was a “cross-notice”. The Federal Rules of Civil Procedure make no
 4 such distinction, however, and Endo was unable to cite any authority in support of its position.

5 Endo voluntarily withdrew its notice of deposition served in this case and has therefore
 6 waived its opportunity to cross examine the witness. It should not now, especially at this late
 7 date, be permitted to foreclose Plaintiff from using the properly taken testimony or to further
 8 delay the conclusion of discovery in these proceedings.

9 C. Teva/Actavis Defendants

10 Plaintiff served a 30(b)(6) Notice of Deposition on the Teva/Actavis Defendants on
 11 October 29, 2021. The parties have agreed that the Teva/Actavis Defendants will provide verified
 12 written responses for certain topics, designate deposition testimony for certain topics, and enter
 13 into a stipulation regarding the authenticity of certain business records for certain topics by
 14 February 4, 2022. Additionally, there is one final fact deposition of a former Teva employee yet
 15 to take place, which is likely to be set in mid-March.

16 II. Third-Party Discovery

17 On January 27, the Court denied Endo/Par, Teva/Actavis, and Allergan’s motion to quash
 18 Plaintiffs’ subpoena to the California Department of Justice seeking re-identification from
 19 CURES of the prescriptions of Defendants’ experts Dr. Vanila Singh and Dr. Douglas Tucker. As
 20 a matter of policy, the California Department of Justice will not produce the prescribers’ re-
 21 identified data absent an order from the Court specifically directing DOJ to do so. Therefore,
 22 Plaintiff respectfully requests that the Court enter such an order. *See* Docs. 906 at 12, 915 at 2
 23 (addressing the same issue for Plaintiff’s expert Dr. Anna Lembke). Plaintiff and DOJ have met
 24 and conferred, and DOJ’s objections were previously filed at Doc. 938-1. The DOJ has indicated
 25 to Plaintiff that it intends to appear at this status conference.

1 **III. Plaintiff's Rule 30(b)(6) Testimony Regarding Zuckerberg San Francisco General**
 2 **Hospital Outpatient Pharmacy**

3 Over the weekend before this filing Walgreens raised purported concerns regarding
 4 Plaintiff's January 20 Rule 30(b)(6) testimony regarding the Zuckerberg San Francisco General
 5 ("ZSFG") Hospital Outpatient Pharmacy, including the both the live testimony and written
 6 responses. Plaintiff responds briefly below.

7 ***Witness preparation.*** Plaintiff's designee, Swati Patel, was properly prepared to testify as
 8 to the institutional knowledge that exists for the ZSFG Outpatient Pharmacy dating back to 2006,
 9 as the parties had agreed. Dr. Patel has worked for ZSFG since 2007, was the outpatient
 10 pharmacy manager from 2010 to 2021, and since 2021 has served as director of pharmacy for the
 11 hospital. *See* Patel Depo. Tr. 14:18-19, 20:11-21:5. She is undoubtedly the person most qualified
 12 to testify as to the outpatient pharmacy's practices during her tenure. As to time periods beyond
 13 her immediate knowledge, Dr. Patel testified that she spoke with "individuals who have been at
 14 this institution longer than I have, since the deposition does go back to 2006, to see if they have
 15 any knowledge that could be added—information added to help answer these questions." *Id.*
 16 13:12-17. Indeed, Dr. Patel testified that she consulted with the staff members who could best fill
 17 gaps in her knowledge, including: (1) a pharmacist employed at ZSFG since 1998 who has served
 18 as a pharmacy regulatory and operations manager since 2002; (2) a pharmacist employed since
 19 1992, including in managerial roles; (3) Dave Woods, the Department of Public Health Chief
 20 Pharmacy Officer, who has been employed for decades (and whom Walgreens also deposed); and
 21 (4) Michelle Fouts, the Department of Public Health Chief Informatics Officer, who also has been
 22 employed for decades (and whom Walgreens deposed as well). *Id.* 273:6-10. These individuals
 23 did not have information to add to Dr. Patel's knowledge because, per Dr. Patel's investigation,
 24 the pertinent policies and procedures did not substantially change during the time periods in
 25 question. Plaintiff offered to provide Walgreens a declaration to this effect. Nevertheless, it
 26 appears that Walgreens is determined to seek additional deposition testimony from Plaintiff's
 27 differently situated hospital pharmacy, despite at least three depositions it has taken to date
 28 focused on this topic (and five focused on Plaintiff's pharmacies writ large). Plaintiff's designee

1 was properly prepared, and discovery as to the ZSFG Outpatient Pharmacy, which, has never
 2 employed more than approximately a dozen pharmacists, maintains a hospital pharmacy license,
 3 and services a closed network of safety net patients, should close.²

4 **Written testimony.** At the outset, Plaintiff does not understand Walgreens' complaint that
 5 Plaintiff "objected to each topic" before providing a response. Preserving objections is standard
 6 practice in civil litigation, and, in fact, Walgreens did the same for its 30(b)(6) written responses.

7 During Plaintiff's several meet and confers with Walgreens about Walgreens' overbroad
 8 30(b)(6) requests, Plaintiff explained that, from Plaintiff's perspective, a number of Walgreens'
 9 requested written topics were impossible to distinguish from other written topics and/or topics of
 10 oral testimony. Walgreens' response was that Plaintiff could make such an objection. That is
 11 exactly what Plaintiff did. For example, Topic 4 seeks identification of the "systems and
 12 programs or other data collection methods, that ZSFG uses to track prescriptions filled." Plaintiff
 13 answered this question—long ago in numerous letters regarding the ZSFG Outpatient pharmacy's
 14 dispensing data—and also in response to written Topic 1, in which Plaintiff identified the
 15 different pharmacy information systems in use from 2006 to present and described the data fields
 16 captured. As to Walgreens' specific concern about Topic 3—that is, identification of the
 17 pharmacy information system in use prior to 2012—as Plaintiff previewed, Plaintiff objected that
 18 the topic was "unreasonably cumulative of information that has already been shared in
 19 discovery." Meanwhile, the answer was provided in response to Topic 1: Plaintiff stated that that
 20 "[a]t all relevant times prior to 2017"—*i.e.*, back to 2006—"the ZSFG Outpatient Pharmacy used
 21 [Foundation Systems Incorporated Pharmacy Software." What Topic 3 sought that was different
 22 from the other topics was a description of retention policies. In response, Plaintiff explained
 23 exactly which pharmacy information records were retained and purged over time. Finally, as to
 24 Walgreens' complaint that the written responses did not specifically state that pre-2012

25
 26 ² Plaintiff also notes that during the deposition, Walgreens' counsel, who had not participated in
 27 negotiations about the topics, strayed far from the agreed-upon Rule 30(b)(6) topics, asking, for
 28 example, questions about FDA approvals for medications, CDC guidelines, the excluded topic of
 the County Jail, and Walgreens' own policies. The witness devoted a full working day to the
 deposition (and additional sessions to preparation) at the height of the Omicron surge, and no
 further deposition testimony is justified.

1 dispensing data is not available, Walgreens fails to mention that Plaintiff informed Walgreens of
2 this fact approximately a year ago.

3 Plaintiff remains available to meet and confer with Walgreens. Plaintiff notes, however,
4 that data productions from the pharmacy were the subject of numerous letters and briefs in 2020
5 and 2021, and Plaintiff has already produced all available data fields to which the parties agreed,
6 including notes fields, from the pharmacy's information systems and explained the meaning of
7 these fields in lengthy meet and confers.

8 **DEFENDANTS' STATEMENT**

9 **I. Status of Party Discovery**

10 **A. Plaintiff's failure to adequately prepare its 30(b)(6) witness**

11 On January 20, 2022, Walgreens took the Rule 30(b)(6) deposition of Zuckerberg San
12 Francisco General Hospital's Outpatient Pharmacy ("ZSFG"). Plaintiff agreed to prepare its
13 witness on four topics dating back to 2006, but Plaintiff failed to do so. Plaintiff's witness was
14 not prepared to testify on any topic before 2010. Patel Tr. 15:11-22 ("Q Did you do anything
15 else to educate yourself in preparation for your testimony today about the 2006 to 2010 time
16 frame? A No. Q Do you have any information about topics 7, 8, 9, and 10 relating to the
17 2006 to 2010 time frame? A No. Q Okay. Did you look for documents relating to topics 7,
18 8, 9 or 10 from the 2006 to 2010 time frame? A No."). For Topic 9, relating to ZSFG's
19 dispensing policies, the witness had no knowledge before 2014. Patel Tr. 96:14-18 ("Q Did you
20 in preparation for your deposition today endeavor to figure out whether there were any
21 differences in Zuckerberg outpatient pharmacy's policies prior to 2014? A No, I did not.").
22 Plaintiff now states in its portion of the status report that "the pertinent policies and procedures
23 did not substantially change during the time periods in question." Walgreens is entitled to sworn
24 testimony on whether that is true. Walgreens therefore requests that the Court order Plaintiff to
25 provide an additional hour of deposition time with a witness who is properly prepared on the four
26 agreed upon topics dating back to 2006.

B. Plaintiff's failure to provide sufficient written responses to agreed upon 30(b)(6) topics

On January 20, 2022, Plaintiff submitted written responses to certain of Walgreens' Rule 30(b)(6) topics. Despite agreeing to provide responses to nine topics, *see* Levin-Gesundheit to Jernudd Email, December 10, 2021, Plaintiff *objected* to each topic—without specifying what information it withheld subject to an objection—and failed to provide adequate responses to several. For example, Plaintiff's written response to Topic No. 3 only addresses a time period going back to 2012 despite Plaintiff's agreement that the relevant time period for the Topics went back to 2006. *See* The People's Written Responses to Certain of Walgreens' Rule 30(b)(6) Topics Directed at ZSFG at 3. Specifically, Plaintiff's response states that ZSFG's pharmacy dispensing records from 2012 to 2016 were archived, but it does not address ZSFG's records from before 2012. When the parties conferred, Plaintiff stated that these records no longer exist. Walgreens requests that Plaintiff supplement its response to include this information.

Plaintiff's written response to Topic No. 4 simply directs Walgreens to Plaintiff's responses to Topic Nos. 1–3 and provides no specific response to Topic No. 4. *See id.* at 6–7. Topic No. 4 seeks information about the means that ZSFG uses to track (1) the amount of time it takes to evaluate and fill or reject each prescription, (2) whether a consultation with a patient was conducted, (3) the length of that consultation, (4) whether a review of the prescription monitoring program was conducted, (5) whether any criteria or Red Flags (either for patient or prescriber) were identified related to Diversion or a nonlegitimate medical purpose for the medication, (6) whether any investigation or Due Diligence was performed on any Opioid prescriptions and (7) the amount of time taken to perform that investigation or Due Diligence. Plaintiff's responses to Topic Nos. 1–3 do not specifically address these subjects. Walgreens requests that Plaintiff supplement its response to state whether ZSFG's pharmacy systems tracked these categories of information, and if so, during what time periods.

Plaintiff's written response to Topic No. 1 is also deficient. This Topic seeks written testimony about “all data collected by the pharmacist and/or pharmacy with respect to a presented prescription.” Plaintiff states that ZSFG's pharmacy software system contains “a variety of notes

1 fields, some associated with the patient and others with prescription number,” but it does not
 2 explain what type of information these fields track. Walgreens requests that Plaintiff supplement
 3 its response to explain what type of information ZSFG’s notes fields track. Walgreens’ Topic No.
 4 1 also specifically requested information about any differences regarding the methods that ZSFG
 5 used to collect and record dispensing data over time. Plaintiff stated that ZSFG used three
 6 different pharmacy software systems during the relevant time period, but it did not say whether
 7 any differences existed between those systems. Walgreens requests that Plaintiff supplement its
 8 response to explain whether the data fields collected and maintained by ZSFG’s pharmacy
 9 systems changed over time.

10 Again, Plaintiff agreed to provide written responses to each of these Topics. If Plaintiff
 11 wished to avoid responding to certain Topics, the proper means for doing so was to move for a
 12 protective order. Walgreens therefore requests that the Court order Plaintiff to supplement its
 13 written responses to provide complete answers to the Rule 30(b)(6) Topics that Plaintiff agreed
 14 to.

15 **C. Plaintiff’s Discovery Requests.**

16 Defendants have produced millions of documents in the MDL, which are deemed
 17 produced in this case, and have made major additional productions specific to this case.

18 **1. Walgreens**

19 **Walgreens** has complied with all the Court’s instructions and requests at the last
 20 conference.

21 **a. Walgreens’ Recent Production**

22 Walgreens’ recently produced eleven documents that consisted of Walgreens’ policies
 23 restricting pharmaceutical sales representatives from communicating directly with Walgreens
 24 pharmacists, certain Walgreens’ quarterly newsletters, and a Walgreens’ agreement with Purdue
 25 Pharma, L.P., in which Walgreens agreed to inform its pharmacists about the “clinical attributes”
 26 of a Purdue product, including the FDA-approved warnings and other risks associated with the
 27 product. Walgreens identified these documents in the course of preparing a witnesses to testify in
 28 another case and, in an abundance of caution, promptly produced them.

1 Plaintiff focuses on the agreement with Purdue and asserts that it should have been
 2 produced earlier in response to Plaintiff’s Request for Production No. 5, which seeks “[a]ll
 3 documents and communications or agreements with opioids manufacturers and distributors
 4 related to the marketing, sale, promotion, adherent programs, training, or supply of Opioids”
 5 Walgreens did not agree to produce documents in response to RFP No. 5, and Plaintiff never
 6 moved to compel. It is too late to do so now. Moreover, the agreement in question does not
 7 relate to “marketing, sale, promotion, adherent programs, training, or supply.” Walgreens
 8 nevertheless produced the agreement as soon as it was identified out of an abundance of caution.

9 **b. Walgreens’ 30(b)(6) Witness**

10 Plaintiff states that Walgreens’ 30(b)(6) witness was “under- or unprepared to offer
 11 testimony on a whole host of issues.” But Plaintiff’s assertion is wholly unsupported. Plaintiff
 12 did not raise any specific deficiency in Walgreens’ testimony until just hours before this filing
 13 was due. Plaintiff now states that Walgreens’ witness “could not identify with any certainty how
 14 Walgreens’ pharmacist bonuses were calculated over the years 2006-2013,” and he could not
 15 “confirm whether a patient whose opioid prescription was refused could file a complaint affecting
 16 the store’s customer feedback score.” Plaintiff offers no citation to the transcript in support of its
 17 assertions. Walgreens’ witness provided answers to Plaintiff’s questions on both of these topics
 18 and referenced Walgreens’ documents in support of his answers. Plaintiff’s baseless assertions
 19 are inappropriate for inclusion in the status report.

20 **2. Endo**

21 Within the last two weeks, **Endo** located a more than decade-old copy of call data that
 22 overlaps with certain years for which Endo previously produced call data; however, this copy also
 23 includes data for 2007 that had not previously been located in other sources of call data. Endo
 24 produced the 2007 call data in the MDL (including to Plaintiff here) on January 28, 2022. Endo is
 25 in the process of evaluating whether any other data among the newly located source is non-
 26 duplicative of its prior productions of call data and will promptly make any supplemental
 27 production to the extent necessary.
 28

1 Endo and Plaintiff have nearly finalized an evidentiary stipulation, which includes a
 2 number of detailed exhibits. The parties intend to file the stipulation by February 4, 2022. At
 3 Plaintiff's request, Endo also agreed to attempt to locate color or physical copies of certain
 4 marketing materials. Endo requested that Plaintiff provide the bates numbers for the specific
 5 materials requested, which Plaintiff agreed to do.

6 In October 2021, the State of Florida noticed the deposition of Linda Kitlinski, a former
 7 Endo employee, and Endo cross-noticed that deposition in this matter. The first two days of that
 8 deposition took place on November 22 and 23, 2021, with Plaintiff's counsel in attendance. As
 9 Plaintiff noted in several prior Joint Status Updates, Plaintiff was due to question Ms. Kitlinski
 10 when the deposition resumed on January 25, 2022. (Doc. 806 at 7; Doc 851 at 11; Doc. 906 at 8;
 11 *see also* Jan. 7, 2022 Tr. at 19:2-5), after which Endo would have had the opportunity to question
 12 the witness as well. Shortly before the deposition was to be resumed, however, Endo and the State
 13 of Florida entered into a settlement and, on January 18, 2022, the State of Florida filed a Notice of
 14 Cancellation of Continued Videotaped Remote Deposition of Linda Kitlinski in *State of Florida*
 15 *v. Purdue Pharma L.P.*, Case No. 2018-CA-001438 (Pasco Cty. Fla.). (*See* Ex. A, attached.)
 16 Because the underlying deposition notice was withdrawn, there was no deposition to cross-notice;
 17 therefore, Endo notified Plaintiff of the cancellation of its cross-notice. (*See id.*) Recognizing that
 18 the deposition must conclude, if at all, in another jurisdiction, Ms. Kitlinski's counsel asked
 19 Plaintiff's counsel if Plaintiff would like to notice a new deposition of Ms. Kitlinski in this case,
 20 but—despite previously expressing a desire to complete the deposition (*e.g.*, Doc 851 at 11)—
 21 Plaintiff declined.³ As a result, the deposition has not been concluded, and Endo has not had the
 22 opportunity to question the witness; thus, absent completion, the deposition cannot be used at
 23 trial. Accordingly, Endo requests that the Court permit Endo to notice Ms. Kitlinski's deposition
 24 in these proceedings for the narrow purpose of incorporating the incomplete deposition testimony
 25 and completing the questioning.

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 28 ³ Ms. Kitlinski's counsel also asked all other plaintiffs' counsel who reserved time to question
 Ms. Kitlinski if they would like to notice the continued deposition and each declined.

As reported in the parties' past Joint Status Updates, Endo and Par continue to assess historical pre-MDL and MDL productions, including in connection with an on-going special master process in another federal case remanded from the MDL, *City of Chicago v. Purdue Pharma, L.P., et al.*, No. 1:14-cv-04361 (N.D. Ill.), where Endo is a defendant. Following discussions with plaintiff's counsel in *City of Chicago*, Endo agreed, in the spirit of compromise and without waiver of its objections, to produce to the City of Chicago approximately 265,000 documents identified through a technology assisted review ("TAR") process from the repository Endo established where plaintiffs can view documents determined to be non-responsive to discovery requests in opioid litigation. Pursuant to the parties' agreement in that case, Endo will produce these documents without review for relevance (subject to certain limited exceptions), will not run TAR over the documents withheld from the repository on the basis of privilege, and will not otherwise be further addressing privileged documents. Following production in *City of Chicago*, Endo will produce these documents in the MDL pursuant to MDL Discovery Ruling 22. Endo continues to believe that the substantial majority of the documents in the repository—all of which were already subject to a good-faith responsiveness review—are non-responsive, irrelevant, and/or duplicative or cumulative of documents and information previously produced, and that the additional steps being taken with respect to these documents go beyond Endo's discovery obligations. Endo also disagrees with Plaintiff's assertions concerning possible evidentiary limitations or sanctions and reserves the right to oppose a request for such relief if and to the extent Plaintiff brings a properly noticed motion before the Court.

Additionally, on January 31, 2022, following a meet and confer with Plaintiff here, Endo produced 26 documents in MDL, which were produced in response to pre-MDL civil investigative demands, but were apparently inadvertently omitted from early MDL productions. Endo believes the information in these documents has been previously produced in other documents or data sets, or is otherwise available, but produced the documents in the spirit of

1 completeness. Endo and Par will promptly notify Plaintiff if they determine that any further
2 supplementation of MDL productions is warranted.⁴

3 **II. Plaintiff's Request for Admissibility and Authentication Stipulations.**

4 During the meet-and-confer on this topic, Plaintiff made a very broad proposal that
5 seemed to ask Defendants to stipulate to a huge universe of documents as both authentic and
6 admissible as business records. Plaintiff provided a revised proposal in writing on October 29,
7 2021. To better understand and consider Plaintiff's proposal, which remains very broad,
8 Defendants wrote back on November 12, 2021, with a series of questions. Plaintiff has not yet
9 responded to the questions in Defendants' letter. Defendants remain willing to continue to meet
10 and confer on this topic, but Defendants continue to believe that any such discussion will be more
11 focused and productive once the parties identify exhibits for trial.

12 **III. Trial Logistics Issues**

13 Defendants seek guidance as to the Court's plan for handling protocols and issues related
14 to Covid-19. The parties recently raised the issue of Covid-19 protocols directly with Judge
15 Breyer in their joint submission dated January 28, 2022 (ECF No. 998). Defendants raise these
16 issues here in case the Court determines that the Joint Status Hearing serves the appropriate forum
17 for providing such guidance.

18
19 DATED: February 1, 2022

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⁴ Endo's and Par's productions in other opioid matters will continue notwithstanding the close of fact discovery in this case.

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ATTESTATION

Pursuant to Civil L.R. 5-1(h)(3), I hereby attest that concurrence in the filing of this document has been obtained from the above signatories.

Dated: February 1, 2022

By: /s/ Kevin R. Budner

⁵Defendant Allergan Finance, LLC was formerly known as Actavis, Inc., which was formerly known as Watson Pharmaceuticals, Inc. Defendant Allergan plc, which was formerly known as Actavis plc and is now known as Allergan Limited, does not waive but rather expressly preserves its objection to the Court's personal jurisdiction over it.

CERTIFICATE OF SERVICE

I hereby certify that, on February 1, 2022, service of this document was accomplished pursuant to the Court's electronic filing procedures by filing this document through the ECF system.

/s/ Kevin R. Budner
Kevin R. Budner